

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TALLY ANN ROWAN,

Plaintiff,

ORDER

v.

09-cv-420-slc

MARTY ORDINANS,

Defendant.

In an order entered on August 21, 2009, this court granted plaintiff Tally Rowan leave to proceed *in forma pauperis* on a claim that defendant Marty Ordinans failed to intervene to stop the violation of her rights under the Eighth Amendment. On September 29, 2009, defendant filed an answer to the complaint raising various affirmative defenses. Now plaintiff has filed reply to the answer in which she objects to statements made in the answer.

Fed. R. Civ. P. 12(b) permits a defendant to avoid litigation of a case if plaintiff's allegations of fact, even if accepted as true, would be insufficient to make out a legal claim against the defendant. Although defendant has raised certain affirmative defenses in his answer he has not filed a motion to dismiss. If he did file such a motion, then plaintiff would be allowed to respond to it. Otherwise, plaintiff does not need to respond to defendant's answer. Indeed, F.R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer unless the court asks for one, which did not happen here. Plaintiff should be aware, however, that pursuant to F.R. Civ. P. 8(d), the court assumes that she has denied the factual statements and affirmative defenses raised in defendant's answer.

ORDER

IT IS ORDERED that plaintiff's reply to defendant's answer (Dkt. 20) will be placed in the court's file but will not be considered.

Entered this 5th day of November, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge